IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.240 OF 2004

Shri Anand Shivram Samant. .. Petitioner

Vs.

M/s.Goodlass Nerolac Paints Ltd.
& Ors. .. Respondents

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Shri V.K.Pradhan for the petitioner.

Shri C.U.Singh with Shri N.B.Jalota i/b M/s.Sanjay Udeshi & Co. for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 23rd NOVEMBER, 2004.

P.C.

1. Heard the learned advocates for the parties.

2. The grievance of the petitioner is that inspite of the specific direction by the Industrial Court to reinstate the petitioner with continuity of services and full back wages with effect from 4th July, 1989 till the date of reinstatement within one month from the date of the order passed by the Industrial Court i.e. 14th December, 1998, and further that it was the specific case of the petitioner that he was occupying the post of Clerk

prior to his termination from the services, and the said statement was not denied or disputed by the respondent company, yet the respondent-company with willful violation of the order of the Industrial Court had issued the order of reappointment of the petitioner as the Trainee. The contention of the respondent company, on the other hand, is that the petitioner was employed as the Trainee and there was a categorical statement in that regard made in the amended written statement and there was no finding either by the Labour Court or by the Industrial Court contrary to the said stand taken by the respondent company in relation to the status of the petitioner, and therefore, it cannot be said that there has been violation of the order of the Industrial Court in reinstating the petitioner as the Trainee. As regards the expression "re-employment" in the appointment letter issued on 27th February, 2004, the learned advocate for the respondent Company has fairly conceded that there was mistake in that expression and that would be corrected by issuing a fresh letter in that regard in consonance with the order issued by the Industrial Court, though the respondent Company has sought to challenge the said order in the appeal before the Apex Court.

3. Perusal of the orders passed by the Labour Court as well as the Industrial Court nowhere discloses any clear finding to the effect that the petitioner was occupying the post of Clerk prior to his termination from the services with the respondent Company. The directions issued by both the Courts below merely are to the effect that the petitioner should be reinstated with continuity in services without referring to any post in which the petitioner was working prior to his termination from the services. Undoubtedly, in the complaint filed by the petitioner, there was a categorical statement in the paragraph 3(a) that :-

> "The Complainant states that he is in the employment of the respondent company for the last 14 months i.e. from 19th February, 1998 to 4th July, 1989 in the capacity of a clerk and his monthly wages are about Rs.1000/-."

Though it was sought to be contended by the learned advocate for the petitioner that the said averments were not specifically denied by the respondent company in the written statement with reference to the contentions of the paragraph (3) of the Complaint, it contains the following statement in the paragraph 5

thereof.

> "With reference to paragraph 3(i), the respondent denies that the Complainant was in the employment of the respondent for last 14 months, i.e. from 19th February, 1988 to 4th July 1989 or that he was drawing wages of about Rs.1000/- as a Clerk."

Obviously, the said statement clearly amounts to denial of the statement in paragraph 3(a) of the complaint, as regards the employment of the petitioner with the respondent Company as also the quantum of salary claimed to have been drawn by the petitioner as well as the status which was claimed to have been occupied in the employment of the respondent by the petitioner. It is also to be noted that the respondent company in its amended written statement has further stated that "the complainant, who was taken on apprentice in August, 1988, was asked to acquaint himself with the audit work and assist the regular Accounts Department Personnel during the apprenticeship period".

4. Undoubtedly, there was specific plea raised that the petitioner was employed as an apprentice.

The Labour Court, while dealing with the said claim of the respondent company had arrived at the finding that "it is not disputed that the workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward including apprentice. Thus, as per the definition of expression workman under I.D.Act, even apprentice is a workman. In order to counter the statement of the respondent company, the complainant referred the provisions of Apprentices Act, 1951. Under the provisions of Apprentices Act, 1961, a person who is engaged to undergo a course of apprenticeship training under an employer in pursuance of a contract of apprenticeship is called an apprentice. The provisions of labour laws are not applicable to such apprentice. Here in this case it is undisputed that the respondent did not obtain a contract of apprenticeship, and required under the provisions of Apprentices Act 1961. It is clear from the above discussion that the present complainant is not an apprentice under the provisions of Apprentice Act, and as such the employer is not entitled to terminate the complainant as apprentice under the provisions of Apprentices Act, 1961. Since the complainant is not an apprentice under the provisions of the Apprentice Act, it is just to hold

that he is a workman under the definition given in I.D.Act, 1947." Obviously, though the contention of the respondent company that the petitioner was employed as an Apprentice under the provisions of Apprentice Act, 1961, has been rejected, there has been no finding to the effect that the petitioner was employed as Clerk prior to his termination from the services. In view of the fact that neither the order of the Labour Court nor that of the Industrial Court discloses that the status which the petitioner had enjoyed in the employment of the respondent company prior to his termination from the services, it would have been appropriate for the petitioner to obtain necessary clarification in that regard from the concerned Court before seeking to initiate the contempt proceedings on account of reinstatement as the Trainee. In view of the fact that it is debatable question as to whether the petitioner was occupying the post of clerk or not, prior to his termination from the services with the respondent, it will not be appropriate to initiate contempt petition on the ground of alleged non-compliance of the order of the Industrial Court, and reinstatement of the petitioner as the Trainee. Undoubtedly, the respondent company is not entitled to consider the petitioner as having been reappointed in the service, as the directions

issued by the Industrial Court are to the effect that he should be reinstated with continuity of service and with full back wages. In that regard, the learned advocate for the respondent company has assured the Court that an appropriate letter will be issued to the petitioner within a period of two weeks from today. The said statement is accepted.

5. As regards the other grievance of the petitioner, as it is disputable question of fact, it would not be appropriate to initiate contempt petition against the respondent company, at this stage. Hence, while accepting the said statement of the learned advocate for the respondent company, the contempt petition is rejected. The proceedings accordingly are dropped. The notice stands discharged.